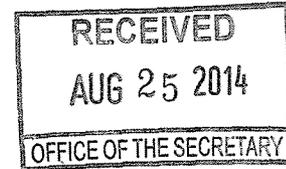


UNITED STATES OF AMERICA

Before the

SECURITIES AND EXCHANGE COMMISSION



In the Matter of:

J.S. OLIVER CAPITAL MANAGEMENT, L.P.,
IAN O. MAUSNER, and
DOUGLAS F. DRENNAN

Administrative Proceeding
File No. 3-15446

**PETITION FOR REVIEW OF RESPONDENTS
J.S. OLIVER CAPITAL MANAGEMENT, L.P. AND IAN O. MAUSNER**

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August 22, 2014

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Pursuant to Rule 410 of the Commission's Rules of Practice, respondents J.S. Oliver Capital Management, L.P. ("J.S. Oliver") and Ian O. Mausner ("Mausner") petition for review of the Initial Decision issued August 5, 2014. Petitioners ask the Commission to remand this matter to the Administrative Law Judge with instructions to address the two exceptions identified below.

INTRODUCTION

J.S. Oliver is a registered investment advisor and Mausner is its co-founder and Chief Executive Officer. This case involves allegations that these respondents violated antifraud provisions of the Securities Act, Exchange Act, Advisers Act, and related rules.¹ The case involves two categories of conduct. The first is allegations that Mausner cherry picked trades by disproportionately assigning profitable trades to favored clients, to the benefit of the favored clients and the detriment of disfavored clients. The second category of conduct involves allegations that J.S. Oliver and Mausner fraudulently misused "soft dollars," using them for purposes that were impermissible and were not sufficiently disclosed to the relevant clients.

Chief Administrative Law Judge Murray conducted a five-day hearing, then ruled against J.S. Oliver and Mausner. Chief Judge Murray recommended the following sanctions:

1. a cease-and-desist order;
2. a permanent bar of Mausner from the securities industry and revocation of J.S. Oliver's registration as an investment advisor;
3. disgorgement by J.S. Oliver and Mausner, jointly and severally, of \$1,376,440 plus prejudgment interest; and
4. that J.S. Oliver pay a civil monetary penalty of \$14.975 million and Mausner pay a civil monetary penalty of \$3.040 million—for total penalties of \$18.015 million.

¹ Exchange Act Section 21B(a) and Advisers Act Section 203(i), 15 U.S.C. § 78u-2(a), 15 U.S.C. § 80b-3(i).

During the proceedings, J.S. Oliver and Ian Mausner appeared *pro se*, with Mausner appearing for J.S. Oliver.

EXCEPTIONS TAKEN PURSUANT TO RULE OF PRACTICE 410(b)

J.S. Oliver and Mausner take exception to the following findings and conclusions of the Initial Decision.²

First is an evidentiary ruling. The Administrative Law Judge excluded from evidence printouts obtained from a website operated by a third-party investment administrator. The printouts provided information about the performance of certain funds operated by J.S. Oliver funds. The administrative law judge indicated that, to authenticate the printouts, the proponent was required to offer witnesses from the operator of the website itself.

The exclusion of this evidence constituted prejudicial error. The court set the bar for admissibility too high, because case law consistently holds that a person who printed a document from a website can authenticate the document. This erroneous ruling is prejudicial to J.S. Oliver and Mausner and therefore warrants review by the Commission under Rule of Practice 411(b)(2)(i) (“a prejudicial error was committed in the conduct of the proceeding”). Indeed, the importance of this error extends beyond this case because, if permitted to stand, the ruling would be unfair to future respondents. Internet evidence has obvious importance in disputes involving the securities industry and, as a practical matter, this ruling would be unfair to future respondents who will be held to an evidentiary standard that is higher than that imposed by the Federal Rules of Evidence.

The *second* error is in the calculation of statutory penalties. Under governing authority from the District of Columbia Circuit, the Initial Decision was required to explain the penalty

² Consistent with Rule of Practice 410 (“Appeal of Initial Decisions by Hearing Officers”), this petition provides the “supporting reasons for each exception” in relatively “summary form.”

calculation in light of the statute, to articulate the rationale for the penalties, and to reconcile the penalty with those imposed in other cases. The Initial Decision does not provide the required explanation. Yet it uses two different methods of counting statutory “acts”—without any explanation for either method. And in amount, it imposes penalties that *exceed* injury to investors by more than \$7 million and disgorgement by more than \$16 million.

Because the Initial Decision does not provide the required “reasoned explanation” for its penalty calculations, its rulings on penalties are legally erroneous. The Commission should remand this case so the Administrative Law Judge can calculate penalties that are consistent with the law and can, as the law requires, articulate the basis for those penalties, and reconcile the penalties with those imposed in other cases. *See* Rule 411(b)(2)(ii)(B) (“conclusion of law that is erroneous”).

Not only is remand required to remedy these legal errors, this case provides an ideal opportunity for the Commission to address the continuing uncertainty about penalty calculations. The penalties imposed under the relevant statutory scheme are not jury verdicts, which can vary widely, and which do not require explanation of the formula used to calculate them. Through remand, the Commission can emphasize the importance of complying with the District of Columbia Circuit’s requirements, can improve consistency across cases, and can further the uniform development of the law in this important area.

REASONS FOR GRANTING THE PETITION FOR REVIEW

I. THE COURT ERRONEOUSLY EXCLUDED EVIDENCE OF THE PERFORMANCE OF RELEVANT HEDGE FUNDS

A. The Administrative Law Judge Indicated To Mausner That He Needed A Witness From The Website To Authenticate A Website Printout

The “cherry-picking” allegation involved the allocation of trades to different accounts at J.S. Oliver. During the proceeding, the Division introduced expert testimony about J.S. Oliver’s trading activity. The expert witness, a business-school professor, testified that he had analyzed certain equity block trades to identify how those trades were allocated to clients. (Initial Decision “ID” 5-11.) The relevant period consisted of eighteen months during 2008 and 2009. The expert testified that, for trades of equities that were owned by both favored and disfavored funds and clients, J.S. Oliver had allocated a disproportionately large share of the favorable trades to certain favored accounts; those accounts included certain J.S. Oliver funds. (*Id.*) The result, the witness testified, was to improve the performance of the favored accounts and worsen the performance of disfavored accounts. (*Id.*)

In response, J.S. Oliver and Mausner offered evidence about the overall performance of allegedly favored and disfavored funds and clients during 2008 and 2009. The Administrative Law Judge admitted exhibits showing the performance of allegedly disfavored clients. (See Exhibits B, C, and D.) J.S. Oliver and Mausner also offered an exhibit that showed the performance of certain favored accounts, which were J.S. Oliver funds. This is “Exhibit E.” (App. A1-A6.) Proposed Exhibit E provides evidence, in short, that the funds that allegedly benefited from the alleged cherry-picking did not perform disproportionately well during the relevant period. (*Id.*)

When Mausner offered this evidence during the hearing, the Division objected. This was the first time the Division had made Mausner aware of its objection. (App. A7 (Tr. 1368:10-17).) Mausner explained that the exhibit was a printout from an “independent third party” website called “Hedge Works.” (App. A7 (Tr. 1365: 10-14).) He identified Hedgeworks as the funds’ administrator (App. A7 (Tr. 1365:10-14)) and he said that the reports had been “taken off the website unaltered.” (App. A7 (Tr. 1366:09-10).)

The Administrative Law Judge excluded the exhibit, stating (despite the explanation that Mausner had just given), “I don’t know anything about who prepared this thing or what it relates to.” (App. A7 (Tr. 1368:21-24).) The Administrative Law Judge then indicated that the documents could be admitted only if Mausner offered testimony from employees of Hedgeworks itself: “You need to come in here with a whole lot of people off the website.” (*Id.*)

After the hearing, J.S. Oliver and Mausner moved for reconsideration. The Administrative Law Judge denied the motion, stating that: “The J.S. Oliver Respondents provide no details about where on the Internet Exhibit E was found or acquired, when the document was found or acquired, who at Hedgeworks allegedly prepared the document, how it was prepared, its intended purpose, or the source of the information and calculations contained in the document.” The ruling also criticized the document itself, noting that “Exhibit E nowhere indicates that it was prepared by Hedgeworks, and the sole contact information on the document pertains to the J.S. Oliver Respondents.” *J.S. Oliver Capital Mgmt, L.P.*, Admin. Proceedings Rulings Release No. 1245, 2014 SEC LEXIS at *3 (Feb. 18, 2014). The ruling added that, “even if [the exhibit] were admitted, I would accord it no weight in the Initial Decision for these same reasons.” *Id.*

B. The Legal Standard For Admission Of Evidence In SEC Administrative Proceedings Is Relaxed And, Even Under Strict Application Of The Federal Rules Of Evidence, The Threshold To Show Authenticity Of A Website Printout Is Not High

The exclusion of proposed Exhibit E is erroneous in light of the governing evidentiary rules and related authorities. To begin, the Commission takes an “inclusive” approach to admitting evidence in administrative proceedings. *See City of Anaheim*, Exchange Act Release No. 42140, 1999 SEC LEXIS 2421, at *4 (Nov. 16, 1999) (collecting authorities). Thus, for example, the basic concepts of relevance is much broader than that concept under the Federal Rules of Evidence, so that “all evidence that ‘can conceivably throw any light upon the controversy’ at hand should normally be admitted.” *Jesse Rosenblum*, 47 S.E.C. 1065, 1984 SEC LEXIS 2614, at *17 (May 17, 1984). *See also Opp. Cotton Mills, Inc. v. Administrator*, 312 U.S. 126, 155 (1941) (stating that “it has long been settled that” exclusionary rules for jury trials typically do not apply to administrative proceedings).

C. The Exclusion Of The Printouts For Lack Of Authentication Was Clearly Erroneous

The proposed exhibit does not need the benefit of this inclusive approach, because it fully satisfies the requirements of Federal Rules of Evidence 901(a). One court recently summarized the law relating to printouts from websites: “A party seeking to admit an exhibit need only make a *prima facie* showing that it is what he or she claims it to be.” *Firehouse Rest. Group Inc. v. Scurmont LLC*, No. 09-cv-00618, 2011 U.S. Dist. LEXIS 89727, at *11 (D.S.C. Aug. 11, 2011). The court expressly stated that “[t]his is not a particularly high barrier to overcome.” *Id.* Once this minimal requirement is met, “arguments concerning the accuracy” of an exhibit “go only to weight, not admissibility.” *Foreward Magazine, Inc. v. OverDrive, Inc.*, No. 10-cv-1144, 2011 U.S. Dist. LEXIS 125373, at *10 (W.D. Mich. Oct. 31, 2011).

The proponent can use any of several methods of authentication, including testimony from a witness with personal knowledge of how the printout was made. *Firehouse Rest. Group Inc.*, 2011 U.S. Dist. LEXIS 89727, at *11. Even under the strict application of the rules of evidence, courts admit website printouts based on testimony from the person who printed them out, as long as the evidence has some indicia of reliability. *See, e.g., Firehouse Rest. Group Inc.*, 2011 U.S. Dist. LEXIS 89727, at *4-5 (admitting documents the witness had printed out from various Internet websites identifying businesses that use “firehouse” in their names; websites were from restaurants, search engines, and government agencies); *United States v. Standring*, No. 04-cv-730, 2005 U.S. Dist. LEXIS 41330, at *4-*5 (S.D. Ohio 2006) (admitting printout from private tax-related websites based on testimony of IRS agent and indicia of authenticity on the printouts); *Perfect 10, Inc. v. Cybernet Ventures, Inc.*, 213 F. Supp.2d 1146, 1153-54 (C.D. Cal. 2002) (admitting printouts from magazine website based on testimony of witness who printed them, finding the printouts sufficiently authentic particularly in light of other indicia of authenticity).

Contrary to these authorities, the Administrative Law Judge indicated to Mausner at the hearing that the only permissible method of authentication was to bring in witnesses from the website. (App. A7-A8 (Tr. 1368:21-1369:02).) That is an erroneous statement of the law. Moreover, this was the first time Mausner had heard of an objection to this exhibit (App. A7 (Tr. 1365)), and had the Administrative Law Judge explained at the hearing that she wanted something more, such as some additional indicia of reliability, Mausner could have provided the additional information.

Indeed, Mausner indicated that he could provide facts making a *prima facie* showing that the documents were what he claimed them to be. *Firehouse Rest. Group Inc.*, 2011 U.S. Dist.

LEXIS 89727, at *4. He indicated that the information came from a specific website and was “unaltered.” (App. A7 (Tr. 1366:09-10).) He provided other indicia of reliability as well: that the website was in the business of providing hedge-fund administrative support and that his company relied on this website for that purpose. (App. A7 (Tr. 1365:10-14).) This meets the authenticity requirement under strict application of the Federal Rules of Evidence; even more so does it satisfy the relaxed requirements for admission in this administrative proceeding.

The exclusion of the Hedgeworks documents was prejudicial to J.S. Oliver and Mausner. The documents address the overall performance of the accounts, a topic that helps refute the allegations that the J.S. Oliver materially favored certain accounts. The exhibit should be admitted and analyzed by the Administrative Law Judge and, if necessary, considered by the Commission as well.

The prejudice caused by the exclusion of this exhibit is particularly apparent when the Administrative Law Judge’s strict stance toward this printout is contrasted with her openness to certain evidence offered by the Division. For example, the Administrative Law Judge permitted the Division to offer hearsay evidence about an opinion given by an expert witness in a *different* proceeding. The earlier proceeding was an arbitration that a former client had brought against J.S. Oliver. (ID 41.) In that earlier proceeding, the client’s expert had given an opinion about “cherry picking.” (*Id.*) Then, in the SEC proceeding, the Division put the former client on the stand, and the client was permitted to testify about the opinion of the expert in the earlier arbitration. The Initial Decision admitted this testimony and gave it weight. (*Id.*) Against that background, it was especially prejudicial for the Administrative Law Judge to prevent Mausner from responding by introducing evidence about the overall performance of the hedge funds that supposedly benefited from this “cherry picking.”

The significance of this evidentiary error extends beyond this case, because the error would prejudice future respondents. Internet evidence has obvious importance in disputes involving the securities industry. And this ruling, as a practical matter, could impose an unfairly high burden on respondents in future administrative proceedings by requiring them, if they want to rely on testimony from any of the many web-based sources of securities data, to obtain testimony of “people [from] the website.” (App. A7 (Tr. 1368:23-24).) In cases such as this one, where the respondents’ lack of funds caused them to appear *pro se*, that requirement could prevent respondents from introducing important evidence. Future respondents should not be at risk of having to meet this new, higher evidentiary burden.

II. THE INITIAL DECISION ERRED BY FAILING TO PROVIDE THE REQUIRED JUSTIFICATION FOR IMPOSING HIGH PENALTIES AND BY USING A METHOD OF CALCULATING PENALTIES THAT IS DIFFERENT FROM THAT USED IN OTHER CASES

A. The Commission Is Required To Articulate The Rationale For A Penalty—In Particular For A Penalty That Is Severe—And Must Reconcile The Penalty With Other Cases

When the Commission imposes penalties, it must provide “a reasoned explanation” for its decision, *Rapoport v. SEC*, 682 F.3d 98, 104 (D.C. Cir. 2012), setting forth the decision’s basis “with such clarity as to be understandable,” *id.* (quoting *SEC v. Chenery Corp.*, 332 U.S. 194, 196-97 (1947)). The burden to provide a reasoned explanation is greater when—as in this case—the Commission would impose a severe penalty: “[W]hen the Commission chooses to order the most drastic remedies at its disposal, it has a greater burden to show with particularity the facts and policies that support those sanctions and why less severe action would not serve to protect investors.” *Steadman v. SEC*, 603 F.2d 1126, 1137 (5th Cir. 1979). *Accord The Rockies Fund, Inc. v. SEC*, 428 F.3d 1088, 1099 (D.C. Cir. 2005) (vacating civil penalties “because the SEC did not explain its reasoning” for the sanctions or “even cursorily explain” why the necessary

elements for such sanctions were satisfied); *see also Jost v. Surface Transp. Bd.*, 194 F.3d 79, 85 (D.C. Cir. 1999) (stating that “[t]he requirement that agency action not be arbitrary and capricious includes a requirement that the agency adequately explain its result”).

Not only must the Commission give a “meaningful explanation” (*Rapoport*, 682 F.3d at 108) of its rationale in the case at hand, it must demonstrate that it is applying the law “consistently” across cases. *Rapoport*, 682 F.3d at 104. The Commission simply cannot “depart from [its] precedent without explaining why.” *Id.* In our context, this means that the Commission must explain how the penalty calculation is consistent with that in other cases. *Collins v. SEC*, 736 F.3d 521, 526 (D.C. Cir 2013) (review under the arbitrary-and-capricious standard “requires consideration of whether the sanction is out of line with the agency’s decisions in other cases”).

B. The Initial Decision Does Not—And Cannot—Provide A Reasoned Justification For The Recommended Penalties, As The D.C. Circuit Requires

The Initial Decision does not meet these requirements, because it does not explain the reasoning behind its penalty calculations, square the calculations with the statute, or reconcile them with other cases.

1. The Initial Decision fails to articulate a reasoned basis for counting each relevant month of the alleged cherry picking as a separate “act” and therefore as a new “violation”

The method for calculating penalties is set out in the governing statutes, which state a maximum penalty based on the number of violative “acts.” *See* 15 U.S.C. § 78u-2(b)(3); 15 U.S.C. § 80b-3(i)(2)(C). This raises the question of the statutory meaning of the word “act.” The Initial Decision uses two different meanings: one for the soft-dollar conduct and one for the “cherry-picking” conduct.

For the conduct relating to soft-dollars, the Initial Decision identifies “acts” in terms of the nature of the activity; it counts all activity in a category of soft-dollar misuse as a single act.

(ID at 61.) For example, the Initial Decision concluded that soft dollars were improperly used for four different purposes. Although these uses involved multiple payments over up to 18 months, (ID at 22-45), the Initial Decision counts all of the payments as a total of four violations (ID at 61). It does not explain this approach or identify any authority for it.

The Administrative Law Judge uses a different approach for the conduct relating to cherry picking. Instead of combining all conduct of a like kind into a single violative “act,” the Initial Decision divides this activity into units of time. It then finds a separate “act” for each month during which the respondents engaged in relevant conduct. (ID at 61.) But the Initial Decision does not, as *Rapoport* requires, say why it used the per-month definition. It does cite a case that referred to this per-month definition, *SEC v. K.W. Brown & Co.*, 555 F. Supp. 2d 1275 (S.D. Fla. 2007), but that case does not give any explanation for the approach, *id.* at 1314-15. In fact, *K.W. Brown* court simply noted the per-month approach as one possible part of a calculation, but it then based the actual calculation on the amount of the benefit to the respondents. *Id.*

2. The Initial Decision fails to show that its calculation of penalties is consistent with the approach take in other cases, or that it considered all relevant factors

The Initial Decision therefore fails to give a reasoned explanation for either of its methods of calculating penalties. It also fails to show that its methods are consistent with those in other cases, because it does not address any of the cases that use entirely different definitions of an act or violation. In *Rapoport*, for example, the Commission defined “acts” in terms of the passage of time, but chose the unit of a year rather than a month—a measure that is one-twelfth as harsh as the method the Initial Decision used for cherry-picking conduct. 682 F.3d at 102. The D.C. Circuit questioned the approach of counting the violation based on any unit of time, and

remanded for further consideration. *Id.* at 108. These further proceedings should include, the Court stated, “determin[ing] how many violations occurred.” *Id.*

Collins illustrates still other definitions of “act.” In that case, even though the respondent had been involved in fraudulent marketing over a period of multiple years (*Collins*, 736 F.3d at 523-24), the Initial Decision deemed all of the instances of fraudulent conduct to constitute a single violation. *Id.* at 524. When the Commission reviewed the decision, it changed to another approach: It defined every violative transaction as a separate “act.” *Id.*

A sample of recent administrative decisions also shows that administrative law judges have used definitions of violative “acts” that differ substantially from those used in the Initial Decision, particularly from the “one for every month” definition. For example, in *Raymond J. Lucia Companies, Inc.*, Int’l Dec. No 540, 2013 SEC LEXIS 3856 (Dec. 6, 2013), the respondent had engaged in conduct involving misleading seminars and marketing activities that had reached as many as 50,000 people. *Id.* at * 21-24, 82-110. The conduct extended across at least three years. *Id.* at *175 n.41. The Division did not seek a penalty on a per-month basis but treated the entire course of conduct as a single violative act. The Administrative Law Judge (Elliott, ALJ.) accepted that approach. He explained that it was based on an effort to reach a reasonable outcome. He explained that, although the respondents “technically violated the statute hundreds of times,” imposing penalties based on each seminar would be “disproportionate and unreasonable.” *Id.* at *175 and 175 n.41.

Another example is *optionsXpress, Inc.*, Int’l Dec. Release No. 490, 2013 SEC LEXIS 1643 (Jun. 7, 2013), which is a decision by Chief Judge Murray. In that case, one respondent was a clearing firm that had willfully undertaken transactions violating a short-sale regulation approximately 1,200 times across 18 months. *Id.* at *260. The Initial Decision identified the

number of violative “acts” by working backwards: It first chose a desired total penalty, then used that desired outcome to identify the number of acts that would lead to it. The Initial Decision explained that a “literal application of the each act or omission language [of the statute] would have an absurd result” (*id.* at *265), apparently because applying any substantial penalty amount to each violation would have led to a penalty in the hundreds of millions of dollars. The Administrative Law Judge decided that a “reasonable outcome” was a total penalty of “\$2 million,” then noted that this penalty would amount to a \$1,667 penalty for each of the 1,200 transactions. *Id.* And to reach that figure, Initial Decision excluded one category of violation (aiding-and-abetting) from the penalty calculation. *Id.*

In our case, the Initial Decision gives no explanation of why it counts cherry-picking violations on a per-month basis rather than use any of the other approaches noted above: a per-year basis (as in *Rapoport*), a per-transaction basis (as the Commission did in *Collins*), or based on counting the entire violative course of conduct as a single violation (as the ALJ did in *Collins* and as in *Raymond J. Lucia Companies*). Indeed, *Rapoport*’s “consistency” requirement is violated even *within* the Initial Decision, which uses a different definition of “act” for the cherry-picking and the soft-dollar issues, but offers no explanation of why. This does not satisfy the requirements of *Rapoport*.

To justify recommended penalties, the Initial Decision must address other factors as well, such as whether the penalties are warranted in light of the other, severe sanctions imposed—including full disgorgement and a lifetime ban.³ The Initial Decision also must explain why it is

³ See *SEC v. Sargent*, 329 F.3d 34, 42 (1st Cir. 2003) (affirming district court’s decision not to impose penalties and noting other sanctions including criminal conviction and a fine); see also *SEC v. Gunn*, No. 3:08-cv-1013, 2010 WL 3359465, at *10 (N.D. Tex. Aug. 25, 2010) (collecting cases that identify the existence of other sanctions as a factor in determining the need for penalties); *SEC v. Shah*, No. 92 Civ. 1952, 1993 WL 288285, at *6 & *6 n.5 (S.D.N.Y. July

permissible for the penalties to exceed both the disgorgement amount and the alleged injury to investors by millions of dollars: The penalties exceed actual injury by more than \$7 million and disgorgement by more than \$16 million. This is nothing like the case that the Initial Decision cites, *K.W. Brown*. There, the penalties were no more than the amount of benefit to the respondent and were substantially less than the injury to investors—despite the court’s strong language about condemning the respondent’s conduct as egregious. 555 F. Supp. 2d at 1315.

The Initial Decision imposes these penalties even though it also indicates that Mausner effectively exhausted his assets to resolve an earlier litigation claim (to a magnitude too low to pay the penalties recommended in the Initial Decision). (ID at 14.) Indeed, in the administrative proceeding that led to the Initial Decision, J.S. Oliver and Mausner proceeded *pro se*. These considerations—the presence of other sanctions that are severe, the huge excess of the penalty amount over the injury to investors or the benefit to the respondents, and the absence of significant net worth on the part of the respondents—suggest that the recommended penalty is many times larger than warranted by the goals of deterrence or punishment. These are topics that the Initial Decision is required to address to justify the high penalties it recommends. *Steadman*, 603 F.2d at 1137 (requiring an explanation of why, among other things, “less severe action would not serve to protect investors”).

In sum, although the Initial Decision provides a passing citation to *Rapoport*, it ignores *Rapoport*’s requirement to provide a “meaningful explanation” of the decision. 682 F.3d at 108. This Initial Decision therefore provides an ideal case for the Commission to send a reminder that

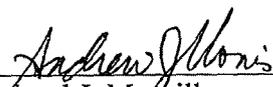
28, 1993) (in insider trading case, civil penalty was not warranted in light of substantial sanctions already imposed on the respondent, which had “sufficiently further[ed] the goal of deterrence, making imposition of [civil] penalty unwarranted”).

the DC Circuit meant what it said in *Rapoport* and *Collins*, and to ensure that future decisions provide the reasoned explanations and the consistent penalties required by the governing law.

CONCLUSION

For the reasons set out above, respondents J.S. Oliver and Ian O. Mausner respectfully request that the Commission remand this matter with instructions to the Administrative Law Judge (1) to admit Exhibit E and address its relevance; and (2) if still necessary, to calculate penalties that are consistent with the relevant statutes and other decisions, and to provide a thorough, reasoned explanation of that calculation and its basis.

Respectfully submitted,


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Appendix

A1

Month-Over-Month Performance as of December 31, 2008

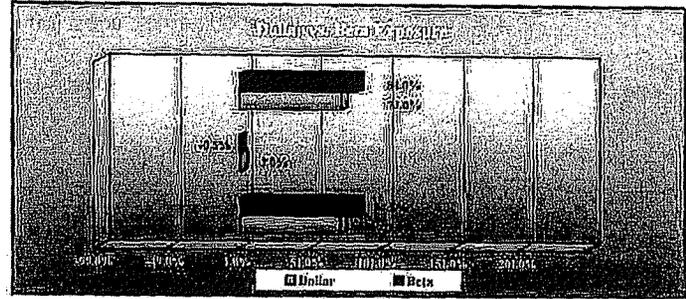
	MTD	YTD
J.S. Oliver Investment Partners I, L.P.**	-0.99%	-47.43%
Standard & Poors 500	1.06%	-37.00%

***Performance is net of all operating fees, management fees and the performance allocation*

Portfolio Characteristics

	Dollar	Beta
Long Exposure	72.0%	84.5%
Short Exposure	1.0%	-0.5%
Net Exposure	73.0%	84.0%

	Long	Short
Top 5 names % of total- Dollar	24.4%	0.0%
Top 10 names % of total- Dollar	37.0%	0.0%
Top 15 names % of total- Dollar	46.1%	-0.4%
Top 20 names % of total- Dollar	53.3%	-1.0%

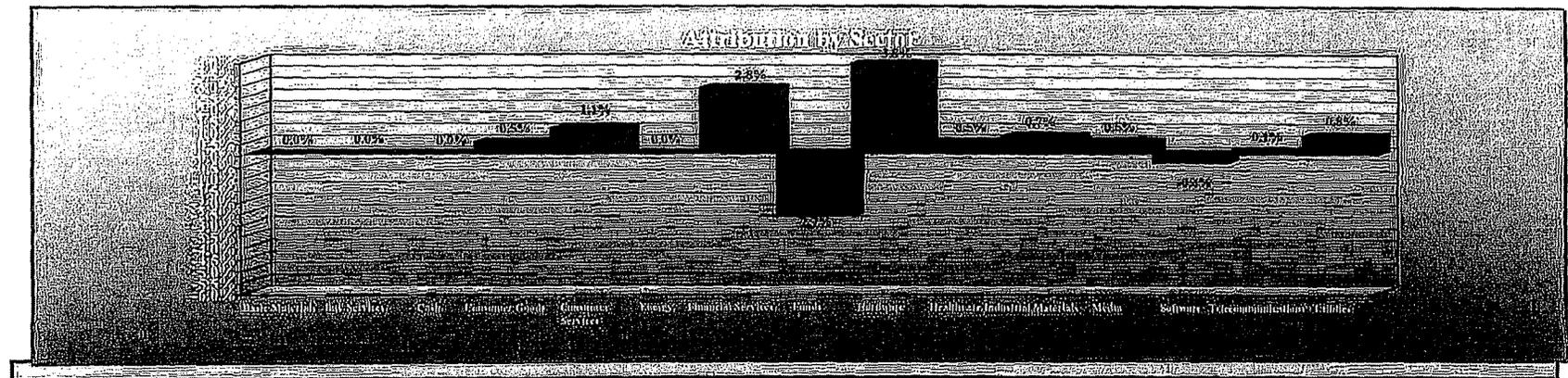
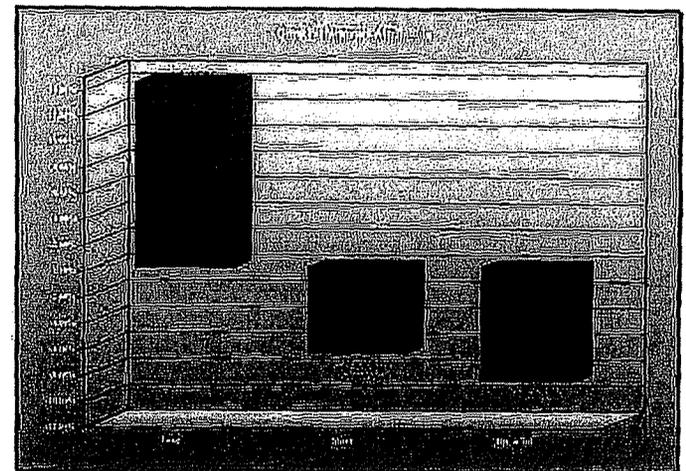


Sector Exposure (Dollar)

	Long	Short	Net
Basic Materials	0.0%	0.0%	0.0%
Bus. Services	2.6%	0.0%	2.6%
Cash	0.0%	0.0%	0.0%
Consumer Goods	3.0%	0.0%	3.0%
Consumer Services	5.3%	0.0%	5.3%
Energy	0.0%	0.0%	0.0%
Financial Services	16.3%	0.0%	16.3%
Funds	8.3%	0.7%	8.9%
Hardware	1.3%	0.0%	1.3%
Healthcare	20.1%	0.3%	20.4%
Industrial Materials	4.1%	0.0%	4.1%
Media	1.7%	0.0%	1.7%
Software	4.5%	0.0%	4.5%
Telecommunications	0.7%	0.0%	0.7%
Utilities	4.3%	0.0%	4.3%
Total	72.0%	1.0%	73.0%

Performance Attribution by Sector

	Long	Short	Net
Basic Materials	0.00%	0.00%	0.0%
Bus. Services	0.62%	-0.63%	0.0%
Cash	0.00%	0.00%	0.0%
Consumer Goods	0.48%	0.00%	0.5%
Consumer Services	1.06%	0.00%	1.1%
Energy	0.00%	0.00%	0.0%
Financial Services	2.91%	0.00%	2.8%
Funds	3.08%	-5.80%	-2.7%
Hardware	3.82%	0.02%	3.8%
Healthcare	0.62%	-0.14%	0.5%
Industrial Materials	0.74%	0.00%	0.7%
Media	0.52%	0.00%	0.5%
Software	-0.37%	0.00%	-0.4%
Telecommunications	0.12%	0.00%	0.1%
Utilities	0.77%	0.00%	0.8%
Total	14.26%	-6.55%	7.7%



J.S. Oliver Capital Management, LP, 7900 Entrada Lazaola, San Diego, CA 92127, ph 858.768-8370, fax 858.764-6731 email jsoinvest@jsoinvest.com

*It should be noted that past performance is not indicative of future returns. All figures are net of fees and thus reflect the deduction of management, incentive, transaction and any other fees related to the operation of the funds.

J.S. Oliver Investment Partners II, L.P.

December 31, 2008 Profile

Annual Net Performance as of December 31, 2008

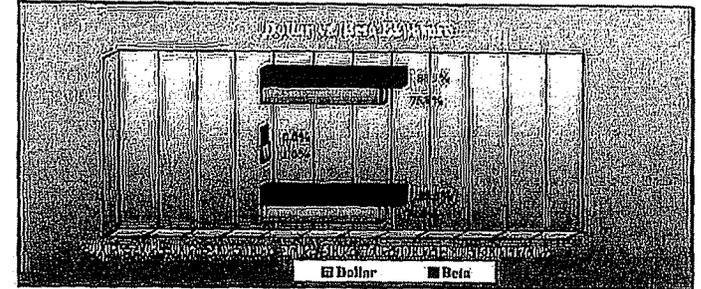
	MTD	YTD
J.S. Oliver Investment Partners II, LP**	-2.39%	-52.20%
Standard & Poors 500	1.06%	-37.00%

***Performance is net of all operating fees, management fees and the performance allocation*

Portfolio Characteristics

	Dollar	Beta
Long Exposure	74.8%	88.9%
Short Exposure	1.0%	0.0%
Net Exposure	75.8%	88.9%

	Long	Short
Top 5 names % of total- Dollar	24.4%	0.0%
Top 10 names % of total- Dollar	37.0%	0.0%
Top 15 names % of total- Dollar	45.8%	-0.7%
Top 20 names % of total- Dollar	53.2%	-1.0%

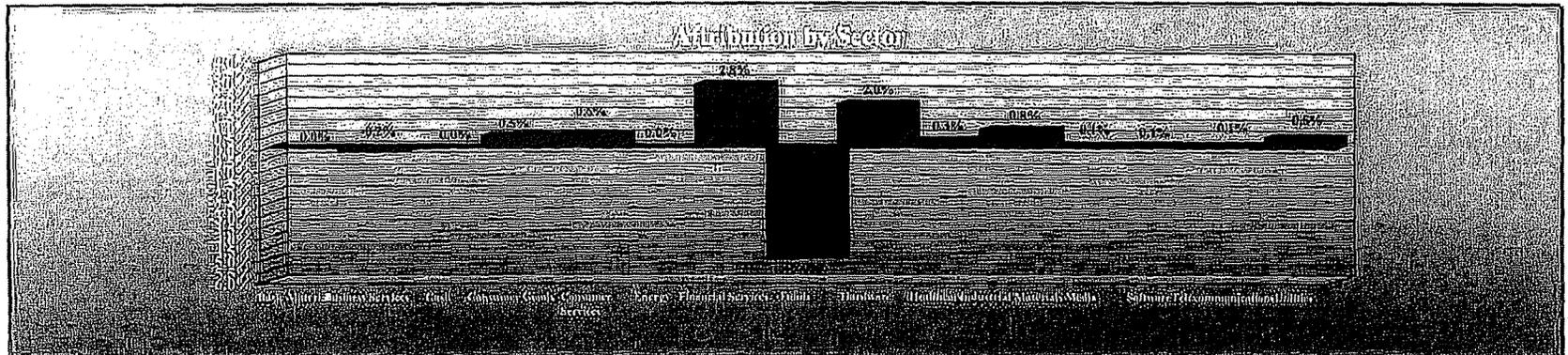
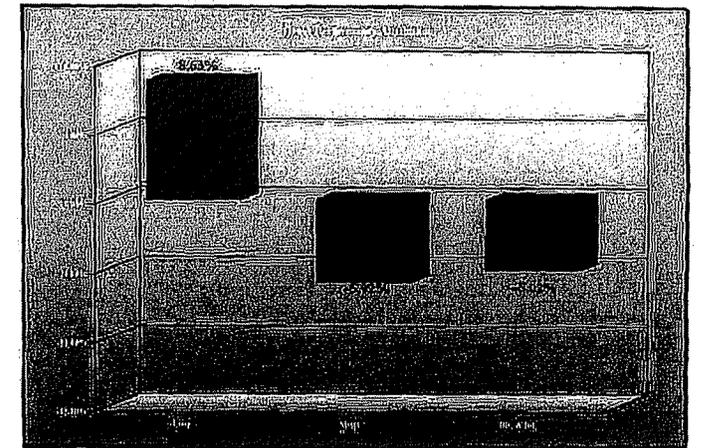


Sector Exposure (Dollar)

	Long	Short	Net
Basic Materials	0.0%	0.0%	0.0%
Business Services	2.7%	0.0%	2.7%
Cash	0.0%	0.0%	0.0%
Consumer Goods	2.5%	0.0%	2.5%
Consumer Services	5.9%	0.0%	5.9%
Energy	0.0%	0.0%	0.0%
Financial Services	15.2%	0.0%	15.2%
Funds	8.6%	0.7%	9.3%
Hardware	1.6%	0.0%	1.6%
Healthcare	22.7%	0.3%	23.0%
Industrial Materials	4.6%	0.0%	4.6%
Media	1.8%	0.0%	1.8%
Software	5.5%	0.0%	5.5%
Telecommunications	0.7%	0.0%	0.7%
Utilities	3.0%	0.0%	3.0%
Total	74.8%	1.0%	75.8%

Performance Attribution by Sector

	Long	Short	Net
Basic Materials	0.00%	0.00%	0.0%
Business Services	0.00%	-0.16%	-0.2%
Cash	0.00%	0.00%	0.0%
Consumer Goods	0.54%	0.00%	0.5%
Consumer Services	0.56%	0.00%	0.6%
Energy	0.00%	0.00%	0.0%
Financial Services	2.84%	0.00%	2.8%
Funds	0.64%	-5.63%	-5.0%
Hardware	1.26%	0.02%	2.0%
Healthcare	0.47%	-0.14%	0.3%
Industrial Materials	0.81%	0.00%	0.8%
Media	0.07%	0.00%	0.1%
Software	0.12%	0.00%	0.1%
Telecommunications	0.14%	0.00%	0.1%
Utilities	0.49%	0.00%	0.5%
Total	8.63%	-5.92%	2.7%



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J.S. Oliver Offshore Investments, Ltd

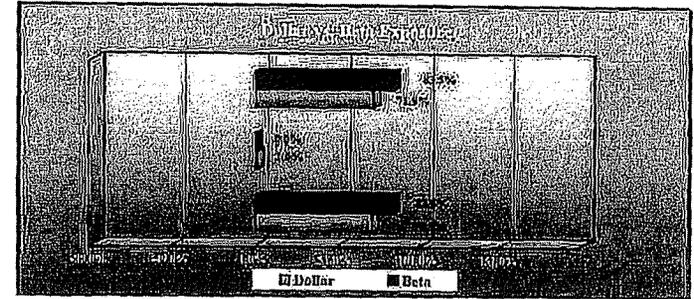
December 31, 2008 Profile

Final Net Returns as of December 31, 2008		
	MTD	YTD
J.S. Oliver Offshore Investments, LTD**	-2.87%	-40.52%
Standard & Poors 500	1.06%	-37.00%

**Performance is net of all operating fees, management fees and the performance allocation.

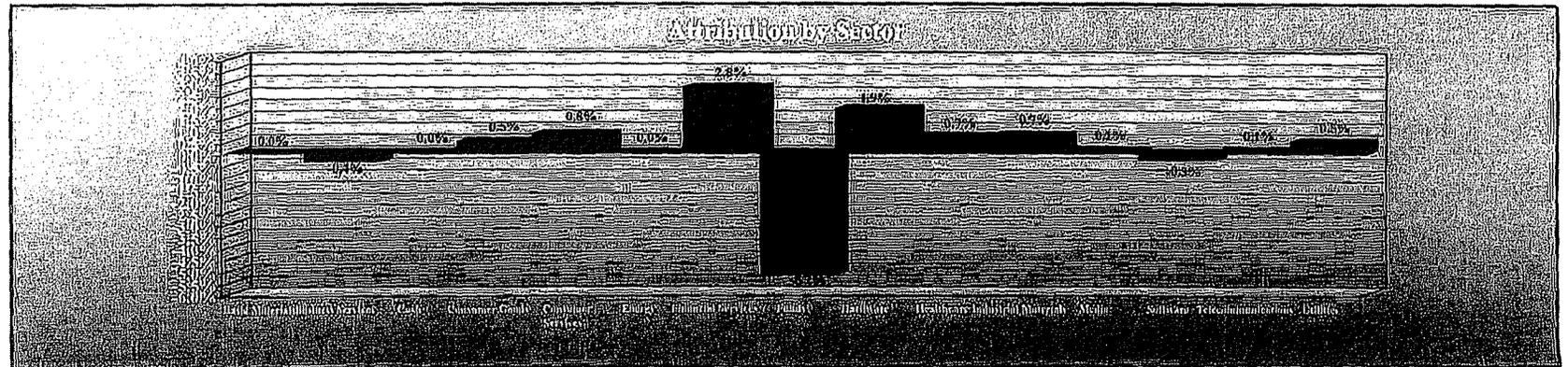
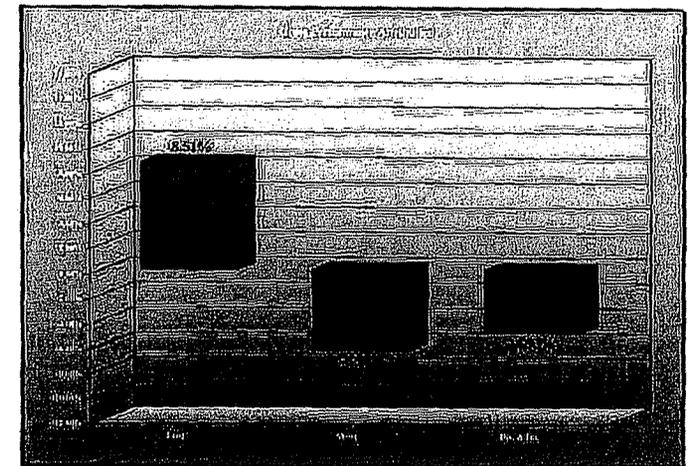
Portfolio Characteristics		
	Dollar	Beta
Long Exposure	70.9%	83.5%
Short Exposure	1.0%	0.0%
Net Exposure	71.9%	83.5%

	Long	Short
Top 5 names % of total- Dollar	19.1%	0.0%
Top 10 names % of total- Dollar	31.9%	0.0%
Top 15 names % of total- Dollar	42.3%	-0.7%
Top 20 names % of total- Dollar	50.3%	-1.0%



Sector Exposure (Dollar)			
	Long	Short	Net
Basic Materials	0.0%	0.0%	0.0%
Business Services	2.7%	0.0%	2.7%
Cash	0.0%	0.0%	0.0%
Consumer Goods	2.8%	0.0%	2.8%
Consumer Services	7.0%	0.0%	7.0%
Energy	0.0%	0.0%	0.0%
Financial Services	13.8%	0.0%	13.8%
Funds	7.9%	0.7%	8.6%
Hardware	1.4%	0.0%	1.4%
Healthcare	20.6%	0.3%	20.9%
Industrial Materials	4.3%	0.0%	4.3%
Media	1.7%	0.0%	1.7%
Software	5.2%	0.0%	5.2%
Telecommunications	0.7%	0.0%	0.7%
Utilities	2.7%	0.0%	2.7%
Total	70.9%	1.0%	71.9%

Performance Attribution by Sector			
	Long	Short	Net
Basic Materials	0.00%	0.00%	0.0%
Business Services	0.00%	-0.26%	-0.4%
Cash	0.00%	0.00%	0.0%
Consumer Goods	0.47%	0.00%	0.5%
Consumer Services	0.79%	0.00%	0.8%
Energy	0.00%	0.00%	0.0%
Financial Services	2.77%	0.00%	2.8%
Funds	0.64%	-5.81%	-5.2%
Hardware	1.91%	-0.06%	1.9%
Healthcare	0.84%	-0.14%	0.7%
Industrial Materials	0.74%	0.00%	0.7%
Media	0.08%	0.00%	0.1%
Software	-0.29%	0.00%	-0.3%
Telecommunications	0.09%	0.00%	0.1%
Utilities	0.47%	0.00%	0.5%
Total	8.51%	-6.38%	2.1%



*It should be noted that past performance is not indicative of future returns. All figures are net of fees and thus reflect the deduction of management, incentive, transaction and any other fees related to the operation of the funds.

J.S. Oliver Investment Partners I, L.P.

December 31, 2009 Profile

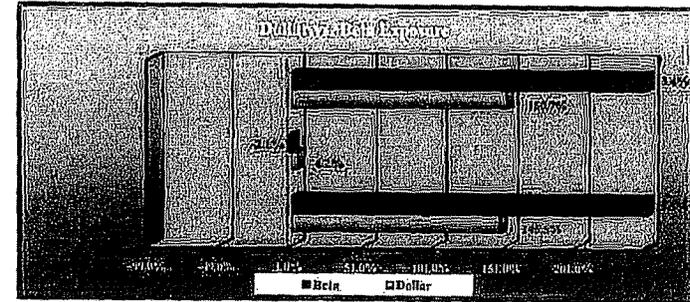
A4

Fund Net Performance as of December 31, 2009		
	MTD	YTD
J.S. Oliver Investment Partners I, LP**	-0.70%	1.00%
Standard & Poors 500	1.93%	26.46%

**Performance is net of all operating fees, management fees and the performance allocation

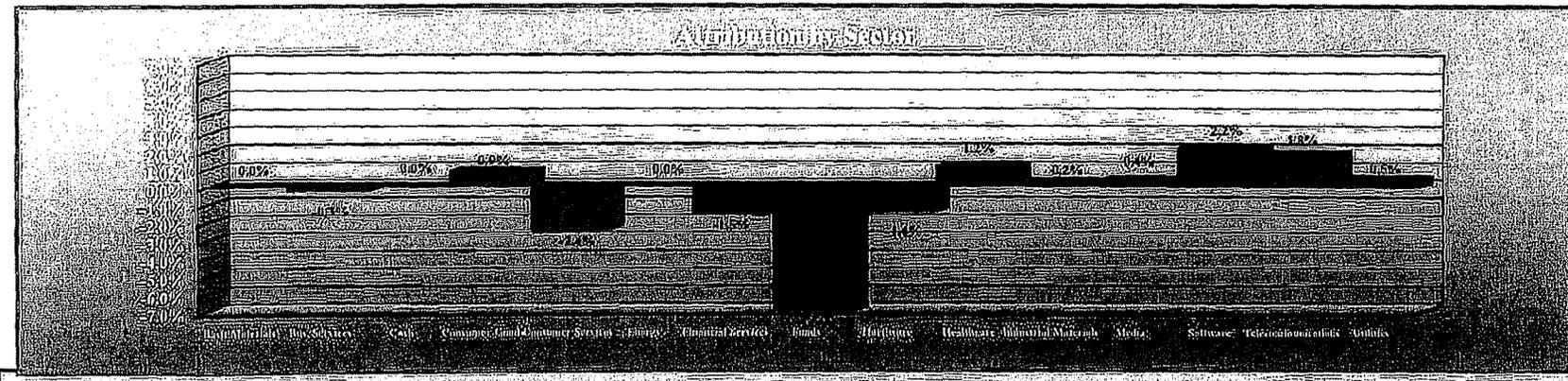
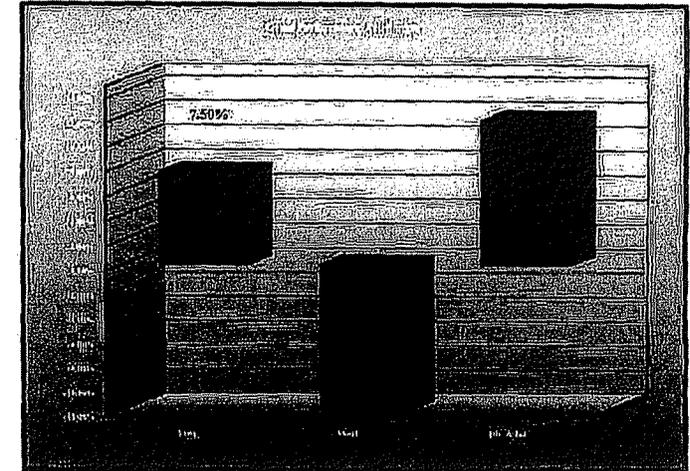
Portfolio Characteristics		
	Dollar	Beta
Long Exposure	146.5%	315.5%
Short Exposure	4.2%	-2.1%
Net Exposure	150.7%	313.4%

	Long	Short
Top 5 names % of total- Dollar	47.1%	0.0%
Top 10 names % of total- Dollar	70.0%	0.0%
Top 15 names % of total- Dollar	87.7%	0.0%
Top 20 names % of total- Dollar	100.7%	-0.1%



Sector Exposure (Dollar)			
	Long	Short	Net
Basic Materials	0.0%	0.0%	0.0%
Bus. Services	1.7%	0.0%	1.7%
Cash	0.0%	0.0%	0.0%
Consumer Goods	2.8%	1.6%	4.4%
Consumer Services	30.7%	0.0%	30.7%
Energy	0.0%	0.0%	0.0%
Financial Services	34.8%	0.0%	34.8%
Funds	18.3%	-2.0%	20.3%
Hardware	7.7%	0.0%	7.7%
Healthcare	15.8%	0.0%	15.8%
Industrial Materials	5.0%	0.0%	5.0%
Media	4.5%	0.0%	4.5%
Software	3.7%	0.0%	3.7%
Telecommunications	15.5%	0.6%	16.1%
Utilities	5.9%	0.0%	5.9%
Total	146.5%	4.2%	150.7%

Performance Attribution by Sector			
	Long	Short	Net
Basic Materials	0.00%	0.00%	0.0%
Bus. Services	-0.26%	0.00%	-0.3%
Cash	0.00%	0.00%	0.0%
Consumer Goods	1.01%	-0.13%	0.9%
Consumer Services	0.34%	-2.77%	-2.4%
Energy	0.00%	0.00%	0.0%
Financial Services	-1.48%	-0.06%	-1.5%
Funds	0.49%	-14.51%	-14.0%
Hardware	0.91%	-2.36%	-1.4%
Healthcare	1.40%	-0.21%	1.2%
Industrial Materials	0.23%	0.00%	0.2%
Media	0.35%	0.00%	0.4%
Software	2.21%	0.00%	2.2%
Telecommunications	1.85%	-0.04%	1.8%
Utilities	0.46%	0.00%	0.5%
Total	7.50%	-20.08%	-12.6%



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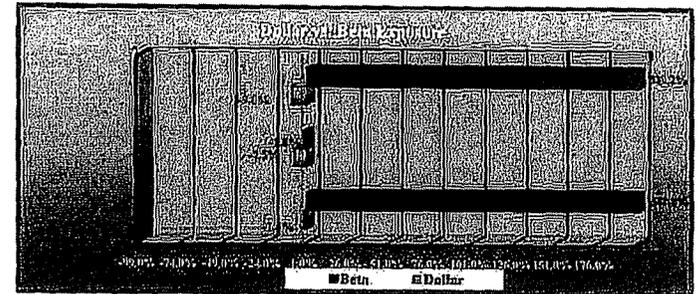
J.S. Oliver Investment Partners II, L.P.

December 31, 2009 Profile

Fund Net Performance as of December 31, 2009			
	MTD	YTD	
J.S. Oliver Investment Partners II, LP**	-0.47%	-35.61%	
Standard & Poor's 500	1.93%	26.46%	

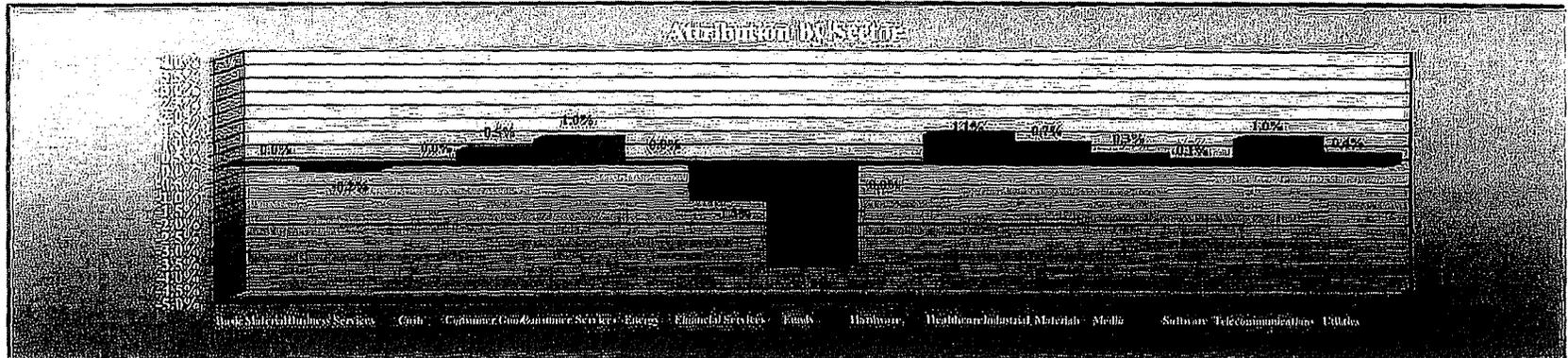
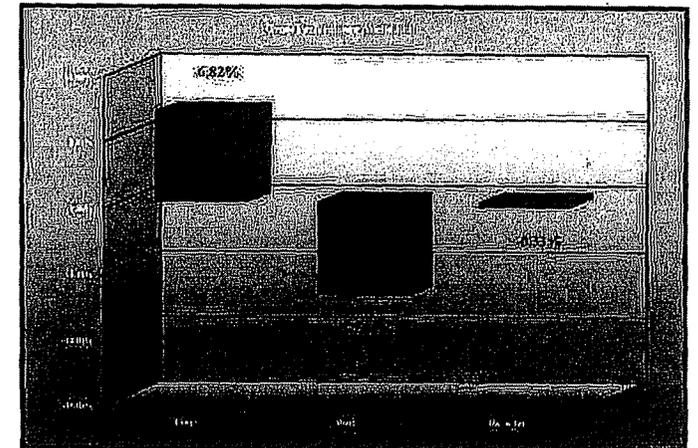
**Performance is net of all operating fees, management fees and the performance allocation

Portfolio Characteristics			
Long Exposure	Dollar	Beta	
Short Exposure	-1.4%	341.0%	
Net Exposure	-7.5%	-1.8%	
	-9.0%	339.2%	
Top 5 names % of total-Dollar	Long	Short	
Top 10 names % of total-Dollar	5.1%	8.1%	
Top 15 names % of total-Dollar	6.1%	7.5%	
Top 20 names % of total-Dollar	6.4%	7.5%	



Sector Exposure (Dollar)			
	Long	Short	Net
Basic Materials	0.0%	0.0%	0.0%
Business Services	0.0%	0.0%	0.0%
Cash	0.0%	0.0%	0.0%
Consumer Goods	-0.2%	0.0%	-0.1%
Consumer Services	0.9%	0.0%	0.9%
Energy	0.0%	0.0%	0.0%
Financial Services	-2.4%	0.0%	-2.4%
Funds	1.7%	-7.5%	-5.7%
Hardware	-0.1%	0.0%	-0.1%
Healthcare	-1.2%	-0.2%	-1.4%
Industrial Materials	0.2%	0.0%	0.2%
Media	0.0%	0.0%	0.0%
Software	-0.2%	0.0%	-0.2%
Telecommunications	-0.2%	0.0%	-0.1%
Utilities	0.0%	0.0%	0.0%
Total	-1.4%	-7.5%	-9.0%

Performance Attribution by Sector			
	Long	Short	Net
Basic Materials	0.00%	0.00%	0.0%
Business Services	-0.21%	0.00%	-0.2%
Cash	0.00%	0.00%	0.0%
Consumer Goods	0.48%	0.05%	0.5%
Consumer Services	0.95%	0.00%	1.0%
Energy	0.02%	0.00%	0.0%
Financial Services	-1.35%	0.00%	-1.3%
Funds	3.32%	-7.18%	-3.9%
Hardware	-0.02%	0.00%	0.0%
Healthcare	1.14%	0.00%	1.1%
Industrial Materials	0.74%	0.00%	0.7%
Media	0.32%	0.00%	0.3%
Software	0.13%	0.00%	0.1%
Telecommunications	0.92%	0.07%	1.0%
Utilities	0.37%	0.00%	0.4%
Total	6.82%	-7.06%	-0.2%



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J.S. Oliver Offshore Investments, Ltd

December 31, 2009 Profile

Final Net Performance (of December 31, 2009)

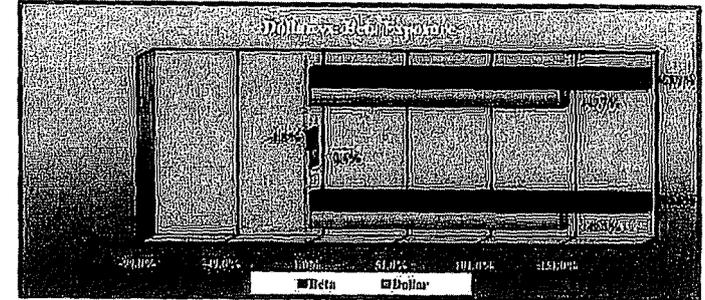
	MTD	YTD
J.S. Oliver Offshore Investments, LTD**	1.28%	-6.14%
Standard & Poor's 500	1.93%	26.46%

***Performance is net of all operating fees, management fees and the performance allocation.*

Portfolio Characteristics

	Dollar	Beta
Long Exposure	149.3%	365.6%
Short Exposure	9.4%	-1.8%
Net Exposure	149.7%	363.7%

	Long	Short
Top 5 names % of total- Dollar	46.1%	0.0%
Top 10 names % of total- Dollar	70.1%	-0.4%
Top 15 names % of total- Dollar	87.5%	-0.4%
Top 20 names % of total- Dollar	101.3%	-0.4%

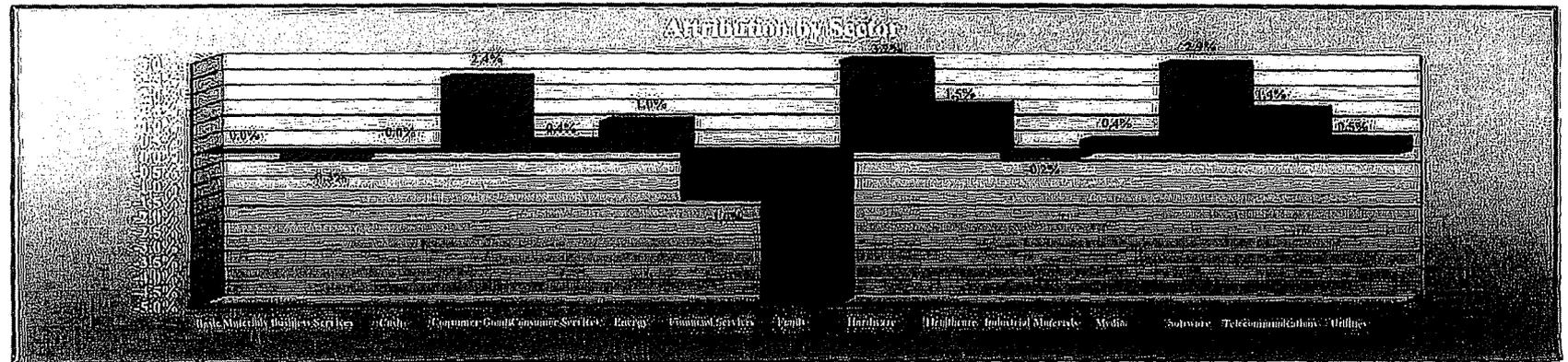
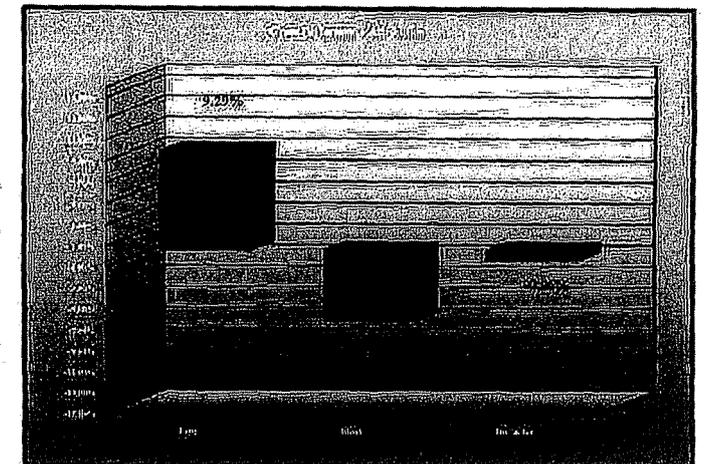


Sector Exposure (Dollar)

	Long	Short	Net
Basic Materials	0.0%	0.0%	0.0%
Business Services	1.7%	0.0%	1.7%
Cash	0.0%	0.0%	0.0%
Consumer Goods	4.6%	0.4%	5.0%
Consumer Services	29.5%	0.0%	29.5%
Energy	0.3%	0.0%	0.3%
Financial Services	35.1%	0.0%	35.1%
Funds	19.3%	0.0%	19.3%
Hardware	8.0%	0.0%	8.0%
Healthcare	14.0%	0.0%	14.0%
Industrial Materials	4.6%	0.0%	4.6%
Media	3.8%	0.0%	3.8%
Software	3.4%	0.0%	3.4%
Telecommunications	18.4%	0.0%	18.4%
Utilities	6.6%	0.0%	6.6%
Total	149.3%	9.4%	149.7%

Performance Attribution by Sector

	Long	Short	Net
Basic Materials	0.00%	0.00%	0.0%
Business Services	-0.27%	0.00%	-0.3%
Cash	0.00%	0.00%	0.0%
Consumer Goods	2.24%	0.19%	2.4%
Consumer Services	0.35%	0.00%	0.4%
Energy	1.01%	0.00%	1.0%
Financial Services	-1.59%	0.00%	-1.6%
Funds	-2.15%	-6.96%	-9.1%
Hardware	3.24%	0.00%	3.2%
Healthcare	1.55%	0.00%	1.5%
Industrial Materials	-0.17%	0.00%	-0.2%
Media	0.39%	0.00%	0.4%
Software	2.91%	0.00%	2.9%
Telecommunications	1.32%	0.09%	1.4%
Utilities	0.46%	0.00%	0.5%
Total	9.29%	-6.68%	2.6%



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1 MR. MAUSNER: I wanted to address the question
2 because I was asked to, so I just wanted to address the
3 question. There are no other comments on this
4 particular exhibit.
5 I'd like to enter into evidence Exhibit E,
6 Your Honor.
7 JUDGE MURRAY: This is Mausner E?
8 MR. MAUSNER: Yes.
9 JUDGE MURRAY: And what is Mausner E?
10 MR. MAUSNER: Mausner E are more performance
11 reports, Your Honor, but this time from another
12 independent third party called Hedge Works, which
13 we've -- has been mentioned before. They were our
14 administrator and provided reports.
15 And so this just confirms, supports the
16 performance data from the -- from B, C and D. So I'd
17 like them entered into evidence. And can I give you a
18 copy of that?
19 JUDGE MURRAY: No, that's okay. I have enough
20 paper I'm carrying. I'm going to have to deny the
21 evidence and look at official documents. I can't carry
22 any more with me.
23 MR. MAUSNER: So would you like me not to give
24 you any of my exhibits?
25 JUDGE MURRAY: Yeah, that's what I would like.

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1 I'm going to rely on the official documents. I'm sorry.
2 MR. VAN HAVERMAAT: I'm sorry, to the extent
3 that was being offered into evidence, Your Honor, the
4 Division would object because this was prepared by a
5 third party.
6 There's a lot of documents and charts included
7 in here, and there's no one to testify as to how this
8 was prepared.
9 MR. MAUSNER: Your Honor, it was just taken
10 off the website unaltered. It's from Hedge Works. It's
11 very important. I'd like you to consider it.
12 JUDGE MURRAY: That's why we had the
13 precirculation.
14 MR. MAUSNER: We gave them copies of this. It
15 was in our exhibit list.
16 JUDGE MURRAY: What was in your exhibit list?
17 MR. MAUSNER: The two files.
18 JUDGE MURRAY: Did you realize he was going to
19 put this in evidence?
20 MR. VAN HAVERMAAT: We didn't, Your Honor.
21 For the record, there were a lot of -- there was a disk
22 of documents, and I don't -- I don't think this is one
23 that was included.
24 We didn't have any -- it's difficult because
25 we didn't have a designation as an exhibit number. But

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1 our -- we don't believe that this was included.
2 MR. MAUSNER: It was included, Your Honor.
3 JUDGE MURRAY: I'll tell you, Mr. Mausner, it
4 goes against the grain of exhibits that we usually put
5 in evidence. There's usually somebody here to explain,
6 that prepared it, that says how it was formulated.
7 MR. MAUSNER: Your Honor, --
8 JUDGE MURRAY: I take it --
9 MR. MAUSNER: -- I have limited funds. You
10 can't fly people in from all over the world. This was
11 just printed off their website. I mean, it couldn't be
12 a more legitimate printout, and it's absolutely critical
13 to our case, Your Honor, because if in fact that there's
14 no different performance between the favored and the
15 disfavored accounts, there's absolutely no evidence.
16 It's that simple. It's a smoking gun situation.
17 JUDGE MURRAY: No, I'm sorry. It's not
18 allowed in evidence.
19 MR. MAUSNER: Just so I understand, Your
20 Honor, so I don't waste any more time, on what basis was
21 B, C and D accepted but yet not E?
22 JUDGE MURRAY: I would have to go back. I
23 guess my -- the bottom line is I'm trying to give you an
24 opportunity to make a defense.
25 MR. MAUSNER: It doesn't feel like it. It

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1 really doesn't.
2 JUDGE MURRAY: I can only stretch it so far
3 when you go beyond the bounds of what is fair. I just
4 can't allow that.
5 MR. MAUSNER: So if I put something in an
6 exhibit and the Division doesn't object to it, and
7 then --
8 JUDGE MURRAY: Well, if they don't have an
9 objection --
10 MR. MAUSNER: No, no, I'm saying they didn't
11 object to it before. And so I have no way to know that
12 they have a problem with this exhibit. It was included
13 in our exhibits. They even readily just admitted they
14 didn't look at everything on the disk. How else could I
15 get it in if we can't fly people back from the East
16 Coast or otherwise to say this is a legitimate printout
17 from their website?
18 JUDGE MURRAY: Because you just told me it's
19 all -- it's something you took off the website.
20 MR. MAUSNER: Right.
21 JUDGE MURRAY: I mean, I don't know anything
22 about what you -- I don't know anything about who
23 prepared this thing or what it relates to. You need to
24 come in here with a whole lot of people off the website.
25 How do I know anything about it? Is it

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1 reliable? I don't know. I mean, I -- well, I shouldn't
2 say.

3 MR. MAUSNER: Okay.

4 JUDGE MURRAY: Just let the record show that
5 we're taking an awful lot of time waiting for Mr.
6 Mausner to come up with another question.

7 MR. MAUSNER: Your Honor, that's not -- I'm
8 trying because of what -- this new information, I'm
9 trying to see now what is likely to be accepted.

10 Most of the things that I have were printed
11 either off websites or proving hotel rates --

12 JUDGE MURRAY: You run a business. Don't you
13 have any documents? Where is the legal advice that you
14 got from Howard Rice? Where --

15 MR. MAUSNER: I'm going --

16 JUDGE MURRAY: Where is the documentation?

17 MR. MAUSNER: Yeah, I'm going to submit that
18 as well.

19 JUDGE MURRAY: Well, you better hurry up.

20 MR. MAUSNER: Okay. What I'm going to do,
21 Your Honor, I'm just going to submit. That's all I'm
22 going to do is just submit documents for evidence. And
23 it either gets accepted or it doesn't.

24 Okay. So this will be Exhibit 15, 1-5.

25 JUDGE MURRAY: What is Mausner's 1-5?

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1 MR. MAUSNER: Yes, and this is -- this is a
2 whole bunch of emails relating to Howard Rice, emails
3 from our system that were prepared by our attorneys.
4 And evidence -- there is printouts showing it came from
5 that system.

6 JUDGE MURRAY: Is there a time stamp?

7 MR. MAUSNER: Yes, there's time stamps on
8 every single one.

9 JUDGE MURRAY: No, but can you tell me for the
10 record?

11 MR. MAUSNER: There's quite a few, but the
12 first one is Wednesday, January 11th, 2006.

13 JUDGE MURRAY: What's the last one?

14 MR. MAUSNER: The very last one is an email
15 from Ildy, which is one of the lawyers. That's on March
16 22nd of 2010 it looks like.

17 JUDGE MURRAY: Okay. Do I have any objection
18 to receiving the evidence of Mausner 15?

19 MR. VAN HAVERMAAT: Yes, Your Honor. The --
20 the document, the cover page of this document appears to
21 be an email between Lindsey Back and Bernard Crasnewski.
22 Again neither person is here to testify or be cross
23 examined on this document, so the Division does object.

24 MR. SEYEDIN-NOOR: Your Honor, now that I
25 don't think is a well taken objection. We are looking

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1 at the owner of the business who's representing that
2 these are emails from his business with a law firm.

3 JUDGE MURRAY: Well, let me just say this.
4 Did these come from the business records of J.S. Oliver?

5 MR. MAUSER: Yes.

6 JUDGE MURRAY: Okay, I'll overrule the
7 objection and allow Mausner 15 in evidence.
8 (Respondent Mausner Exhibit No. 15
9 was received in evidence.)

10 MR. MAUSNER: Okay. And then -- then I'd like
11 to introduce 15-A, which are various bills from Howard
12 Rice law firms -- law firm, excuse me.

13 JUDGE MURRAY: Do we have a period of time on
14 that?

15 MR. MAUSNER: Yes, the very first one is
16 April 30th, 2007. And the last page, Your Honor, is
17 December 31st, 2009.

18 JUDGE MURRAY: Okay. Do I have any objection
19 to the receipt in evidence of Mausner 15-A?

20 MR. SEYEDIN-NOOR: No objections, Your Honor.

21 MR. VAN HAVERMAAT: No objection, Your Honor.

22 JUDGE MURRAY: It's received.
23 (Respondent Mausner Exhibit No. 15-A
24 was received in evidence.)

25 MR. MAUSNER: This next one, Your Honor, is

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1 Exhibit 16. This is a copy of the letter from our
2 previous lawyers, Freeman, Freeman & Smiley. Dated July
3 22nd, 2013.

4 And what other information do you need? It's
5 a letter to the SEC.

6 JUDGE MURRAY: About this case?

7 MR. MAUSNER: About the case.

8 JUDGE MURRAY: Okay. Do I have any objection
9 to the receipt in evidence of Mausner 16?

10 MR. VAN HAVERMAAT: Well, yes, Your Honor,
11 this is a submission to the SEC. This appears to be
12 argument and not fact presented by the offer of this
13 document.

14 JUDGE MURRAY: Is it like a Wells submission?

15 MR. VAN HAVERMAAT: It is, Your Honor, it is.

16 JUDGE MURRAY: A Wells submission. And what
17 are you putting this in for, Mr. Mausner?

18 MR. MAUSNER: As evidence.

19 JUDGE MURRAY: As evidence of what?

20 MR. MAUSNER: Well, as evidence of our point
21 of view on how the facts can be interpreted.

22 JUDGE MURRAY: Well, no, I will allow it in.
23 I'll put it in, but I'm stretching it.

24 MR. MAUSNER: Okay, thank you.
25 (Respondent Mausner Exhibit No. 16